

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA**

**CM/ECF USERS' ADVISORY GROUP**

**MARCH 20, 2001, MEETING**

**MINUTES**

A meeting of the CM/ECF Users' Advisory Group (UAG) was held on Tuesday, March 20, 2001. The meeting, which was held via video teleconference at the Court's Alexandria, Norfolk and Richmond facilities, commenced at 12:15 p.m. and concluded at 1:40 p.m. The following persons were in attendance at the meeting: Edna Ponce-Martinez (for Robert Weed), Debera Conlon, Roy Lasris, Frank Santoro, Barry Spear, Bill Parkinson, Peggy Grivetti, Steve Kopacki, Chuck Miller, Renee Mitchell Paxton, Karin Doggett, Michael Johnson, Pat Woodhouse, Barry Wells, Dick Napoli and Bill Redden.

**Opening Comments (*Bill Redden*)**

Bill Redden made some opening comments. The minutes from the UAG's January 23, 2001, meeting have been posted to the Court's ECF home page at the Court's Internet website and transmitted, via e-mail, to registered ECF users.

Bill also noted other matters of interest:

The Republican leadership in the Senate continues to hope that the House will allow the Senate to sidestep a contentious negotiation over conference committees by taking up S.420 passed last week by the Senate. If the House passes S.420 the need for a House-Senate conference on the bill would be avoided. Because of at least two substantive versions of the bankruptcy reform legislation, this is not seen as likely to occur. (The first difference deals with a nationwide limit of \$125,000 on the amount of home equity that debtors could shield from creditors in bankruptcy cases. The second difference deals with barring people from using bankruptcy as a shield to avoid paying for crimes that includes blocking access to abortion clinics or churches.) The Congress will not be in session for the April 6-23, 2001, spring recess.

Bill noted that the bankruptcy reform legislation does provide for a so-called "temporary" bankruptcy judgeship for the Eastern District of Virginia.

**[Update:** As Congress entered into its spring recess, Senators Daschle and Lott were unable to agree on a format for taking the legislation to conference. Senator Phil Gramm (R-Texas), chairman of the Senate Banking Housing and Urban Affairs Committee, has indicated that he will oppose the predatory lending amendment attached to the Senate-passed bankruptcy legislation. The amendment would transfer responsibility for claims arising from abusive practices to leaders who purchase loan portfolios from bankruptcy lending institutions.

Since returning from its spring recess, Senator's Daschle and Lott have been unable to resolve their respective differences over the make-up of the conference committees.

The American Bankruptcy Institute web site is reporting that President Bush has signed legislation that would extend Chapter 12 through the end of May 2001 and provide a window retroactively from the chapter's last sunset date for debtors to make use of Chapter 12.]

Bill noted that a number of handout items were being provided to the UAG, as follows:

- (1) *a Clerk's Report to the CM/ECF Users' Advisory Group*, dated March 20, 2001, which provided a status report on the Court's CM/ECF efforts to date, and
- (2) VAEB ECF petition and adversary proceeding filing statistics for the months of January and February 2001 and for the period of March 1-19, 2001.

Bill reported to the UAG that it appears VAEB's latest (two-year) cyclical decline in petition filings ended in the fourth quarter of CY 2000 with filings increasing in January and February 2001 over the same periods in 2001. **[Update:** VAEB petition filings in March 2001 reached an all-time record monthly high with 3,062 total filings. Also, for the first time ever, ECF petition filings exceed 1,000 in March with a total of 1,162 petitions filed. ECF petition filings in April 2001 also exceeded 1,000 (1,057).]

## **1. Current Status and Information of Interest**

### **a. Update on Upgrade from CM/ECF Prototype to Version 1 and Data Transfer (*Barry Wells*)**

After having been an ECF prototype court for over three years, VAEB went live on CM/ECF Version 1 (BV1) on February 26, 2001. Also, importantly, the VAEB prototype ECF case data, which had been residing on ECF server equipment located at the Administrative Office of the U.S. Courts (AO), was transferred to the VAEB's server equipment located at Richmond.

A question was raised concerning the continuing ability to "batch file" petitions and schedules in BV1 as had been the case with the prototype version of CM/ECF. Court representatives responded that while this prototype version capability had not been carried over to BV1, the clerk's office was assessing a case opening data upload program developed by another court, which would make the overall filing process easier. It is expected that this program will be made available to ECF users on or about the first week of May 2001. **[Update:** Clerk's office staff is in the process of working with a number of vendors whose products are compliant with the upload program. An initial release date of the upload program to external users is expected to take place early in June 2001.]

A question also was raised concerning whether the address for the U.S. Trustee and case number should be added to the creditors' matrix. A court

representative responded that the U.S. Trustee should be included in the matrix but that the case number must not be included.

**b. NIBS Conversion Program Update (*Karin Doggett and Barry Wells*)**

Having completed both the upgrade to BV1 and the transfer of the Court's prototype ECF data to the Court's own server equipment, the clerk's office is refocusing its attention on working with the AO in completing a NIBS conversions utility program. When the program is finished by the AO and thoroughly tested within the Court, the clerk's office will be able to convert the data in NIBS cases to the case management (CM) component of BV1. The use and maintenance of two separate case management systems is causing a significant ongoing burden on the clerk's office staff members. Moving data from the legacy NIBS case management system will permit the clerk's office to focus its attention and energy entirely on BV1. Once the AO finishes its work on the program, to the Court's satisfaction, automation division staff in the clerk's office will begin conducting an extensive in-house testing period before the NIBS data is converted.

The AO has converted some preliminary data with several clerk's office staff members testing the converted data. As the conversion testing process nears completion, NIBS data clean-up efforts will commence in earnest with particular attention being given to the attorney database. Bill indicated that the earliest possible timeframe for completing the conversion effort would be in early September. A suitable weekend will be selected for the data conversion itself. **[Update:** Given the slow pace of the AO's fixes to identified utility program bugs, it is not expected that the NIBS data conversion can take place before the Columbus Day federal holiday weekend in October 2001.]

**c. WebPACER Electronic Public Access Fee (*Bill Redden*)**

Bill Redden commented on the Judicial Conference policy concerning the WebPACER electronic access fee. He referred to his e-mail message of March 12, 2001, to ECF registered users concerning the BV1 PACER bill software. Bill noted that before transferring the Court's ECF data to the Court, the AO inadvertently had failed to run a PACER document page count routine. To correct this performance issue, the AO remotely is running a special program nightly and on weekends to correct this oversight. The entire process should be completed by late April or early May. **[Update:** The AO has advised that this program will complete its count routine before the end of May.]

The AO recognizes how important it is for PACER account holders to make an economic assessment before PACER billing in ECF cases becomes mandatory nationally on July 1, 2001. Bill referred to an extensive update on the Judicial Conference WebPACER policy, which has been set out in the minutes from the November 14, 2000, UAG meeting. **[Update:** On May 8,

2001, the AO placed a notice in the Federal Register (Vol. 66, No. 89 at 23228) concerning the application of the WebPACER fee in CM/ECF cases as of July 1, 2001. A copy of this notice is appended to these minutes as an attachment.]

A question was raised concerning the downloading of large documents and the fact that system time-outs were most likely to occur during such document download activities. This performance issue concern could be exacerbated when WebPACER billing becomes effective. A court representative noted that a number of factors beyond the Court's control affect Internet access to ECF data. The filing and retrieval of large documents requires more transmittal time. A court representative agreed to contact the UAG member who raised the issue to identify the document in question and to notify the AO for appropriate follow-up action.

A member of the UAG also raised a question concerning what recourse should be taken if PACER billing statements are not correct. A court representative suggested that the PACER Service Center should be advised of the matter immediately and that the clerk's office would provide support assistance to the user if the matter was not being resolved reasonably to the user's satisfaction.

An additional comment was made by a member of the UAG concerning the lack of specificity of document descriptions in the summary e-mail notifications. A court representative noted that the event code selected by the filer is the only description of the document given in the summary e-mail notification. The court representative also noted that the individual e-mail notification provides the additional text the UAG member was seeking. The court representative recognized that there is a need to balance the extent to which summary e-mail notifications should provide adequate information to users without fully substituting the information contained in individual e-mail notifications.

Bill briefed the UAG on the status of the AO's Electronic Fee Impact Study. At the AO's request, a video teleconference was held on February 2, 2001. AO staff members, representatives from the AO's contractor, PEC Solutions, Inc., representatives from PEC Solutions, Inc.'s subcontractor, Kearns & West, VAEB court representatives and a group of external ECF users participated in this video teleconference. The participants acted as a focus group on the value of electronic public access to attorneys. The study also is considering alternative pricing models and long-term revenue projections for the program. Other bankruptcy focus group meetings have since been held in the Southern District of New York and Western District of Texas. **[Update:** At the AO's request, PEC Solutions, Inc. is preparing a survey instrument on WebPACER usage, which will be sent to a sampling of PACER users soon. It is expected that the study will be completed in the first half of CY 2001. PEC Solutions, Inc. will prepare a report for the Electronic Public Access Working Group, which is an advisory group to the AO that is made up of court

representatives. This group will make recommendations for consideration by the AO. The AO plans to make recommendations on this issue to the Court Administration and Case Management Committee of the Judicial Conference of the United States. It is expected that the Judicial Conference will consider any recommendations at its September 2001 session.]

## **2. Communication and Training Efforts**

### **a. Revised CM/ECF Home Page (*Dick Napoli*)**

The clerk's office has substantially revised the Court's CM/ECF home page. The home page has been made more user friendly and has new information items and links added to it. Comment and suggestions for further improvements to the homepage are invited from UAG members and all users. The online training manual link has been updated and is BV1 compliant. [Update: Since the UAG meeting, several additional improvements have been incorporated into the home page, including: a mega cases link, a separate link for the ECF Tutorial for Attorneys and Law Firm Staff, an ECF Announcements link and, under the "Getting Started with ECF" link, revised registration and credit card forms.]

### **b. Bankruptcy On-Line Support/Right Now Tech Update (*Karin Doggett*)**

An online bankruptcy help desk, which is Internet based and intuitive, has been added as a link both to the Court's Internet website and CM/ECF home pages. All users are encouraged to view and make use of the *Bankruptcy Online Support* link on these pages. This link provides answers to frequently asked questions on general bankruptcy, CM/ECF and systems. It also includes an e-mail inquiry capability directed to clerk's office staff and allows for replies to inquirers via e-mail as well. New and updated answers to questions are marked for ease of reference by inquirers.

### **c. Version 1 Compliant External Users' Online Training Manual, FJC External Users' Online Tutorial, Internal Users' Computer Based Training (*Renee Mitchell Paxton*)**

The Court's online training manual materials have been made BV1 compliant and can be accessed at the "Training Manuals" link to the Court's CM/ECF home page. The FJC's BV1 compliant tutorial also has been placed online at the "Training Manuals" link. [Update: Since the UAG meeting, a separate button for the BV1 compliant tutorial has been placed at the foot of the ECF Home Page.]

Computer-based training has been made available to internal ECF users.

**d. Summer 2001 ECF Fairs (*Dick Napoli*)**

A general discussion ensued concerning the holding of ECF Fairs throughout the EDVA commencing no earlier than the Summer 2001. A question was raised whether it might be better to coordinate the timing of any such fairs with a Court decision on whether ECF will be made mandatory (with limited exceptions to ensure fair and effective access to the court). The clerk's office will make initial plans to hold such fairs this fall before the end of November 2001. Efforts also will get underway before the end of Spring 2001 to contact the various bar associations in the EDVA to invite their assistance and participation in this effort. In addition, the clerk's office will explore the possibility of securing CLE credit for attorney attendance at the fairs.

**e. Court Facilities/Equipment Enhancements for Training Purposes (*Bill Redden*)**

In a joint project with the Fourth Circuit Court of Appeals at Richmond, a room in the U.S. Courthouse is being renovated for use as a joint training room. (The Fourth Circuit Court of Appeals is an ECF prototype court.) The renovation project has been completed and furniture is on order. [Update: It is anticipated that the furniture installation will be completed in June 2001 with the joint training room thereafter being available for ECF training usages. Also, the joint training room at the Hoffman U.S. Courthouse is undergoing equipment upgrade and will be available for ECF training usage as well.]

**f. AO Established Bankruptcy ECF Working Group and Newly AO Established Modification Requests Subcommittee (*Bill Redden*)**

The Bankruptcy ECF Working Group has been established to provide guidance and assistance to the AO in the development and implementation of the CM/ECF project in the bankruptcy courts. The working group is made up of court representatives who represent various aspects of clerk's offices and chambers operations. Bankruptcy Judge Stephen Mitchell and Richmond Division Manager Peggy Grivetti represent the EDVA on the working group. The working group is next scheduled to meet at the AO on June 20-21, 2001.

A Modification Requests (MR) Subcommittee also has been established. The purpose of the MR Subcommittee is to review and prioritize requests submitted by the CM/ECF courts to modify BV1 and to suggest improvements for incorporation into BV2 (BV2 is expected to be released to the CM/ECF courts during CY 2002.) Bankruptcy Judge Mitchell is a member of the MR Subcommittee.

**g. Internet Access to Court Document Judiciary Public Hearing (*Bill Redden*)**

The Judicial Conference is addressing privacy issues with respect to the implementation of CM/ECF. The Subcommittee on Privacy & Public Access

to Electronic Case Files, of the Judicial Conference Committee on Court Administration & Case Management, was created in 1999. The Subcommittee held a public hearing on March 16, 2001, and received more than 240 public comments. It is anticipated that recommendations from the Subcommittee's parent committee and other Judicial Conference committees will be presented to the Judicial Conference when it next meets, in session, in September 2001.

In the civil case file context, Bill noted four policy options considered by the Subcommittee:

- Maintain the presumption that all filed and unsealed documents are available both at the courthouse and electronically. It would be up to counsel and pro se litigants to protect their privacy interests on a case-by-case basis through motions to seal specific documents or to exclude certain files from electronic availability.
- Treat paper and electronic access equally but define 'public file' in a way that makes clear what documents should be available for inspection, either at the courthouse or electronically.
- Establish levels of access to certain electronic case file information. Software programs would restrict electronic access to certain documents, by the identity of the individual seeking access, the nature of the document, or both. Judges, court staff, parties, and counsel would have unlimited remote access to all electronic case files.
- Seek an amendment to one or more of the Federal Rules of Civil Procedure to account for privacy concerns.

Witness testimony at the March 16 public hearing is available for reading at [www.uscourts.gov](http://www.uscourts.gov).

A comment was made at the meeting about the possibility of reducing social security and other account numbers to the final four digits.

The UAG will be kept apprised of further developments in this area.

### **3. Hand-out Materials (*at meeting sites*)**

A Clerk's Report to the UAG was prepared and provided to the UAG members at the meeting. The report covered implementation of BV1, local enhancements to and use of BV1 features, the status of the NIBS data conversion utility software program and user communications and training activities.

A series of bar graphs showing ECF petition filings for January 2001 (790), February 2001 (857) and March 2001 (through March 19) were provided to the ECF members. **[Update:** ECF petition filings in March reached an all-time monthly

record high of 1,162. April 2001 ECF petition filings also exceeded one thousand in number (1,057).

#### **4. Technical Questions**

No technical questions were raised for consideration at the meeting.

#### **5. Issues of Interest to UAG Members**

##### **a. ECF Order Process Software Program Update (*Barry Wells*)**

Barry provided an update on the ECF order process software program, which will permit external ECF users to submit orders electronically in cases and proceedings for entry by the Judges. When completed, this program will significantly streamline the process of entering orders in ECF cases and proceedings. The case administration module is nearing completion and development is underway on the Judges' module. A number of internal policy and LBR impact considerations are under review and will need to be resolved before the program becomes operational later this year. **[Update:** It is anticipated that the program will be delivered to chambers in June 2001 for extensive training.]

##### **b. "BiFS" Intranet Forms Program (*Barry Wells*)**

The "BiFS" Intranet Forms Program is available for internal ECF users. It allows deputy clerks to take pdf documents and populate those documents with ECF data. **[Update:** This program was demonstrated to participants, at the AO, who attended a recent meeting of the MR Subcommittee. The demonstration was well received by the meeting participants.

##### **c. Extending POC Filings to Non-Attorneys (*Bill Redden*)**

BV1 has the capability of assigning different internal and external groups to various BV1 functions. The clerk's office is in the process of assessing the best means by which non-attorneys will be granted limited access to file proofs of claims electronically in ECF cases. (LBR 9010-1 permits persons other than members of the Bar of the Court to file proofs of claim.) Currently, such authorization has been limited to attorneys. The U.S. Internal Revenue Service has expressed an interest in being authorized to have designated employees trained for this purpose. The clerk's office will be contacting the IRS and other governmental entities and financial institutions that may have an interest in filing proofs of claims electronically in ECF cases. **[Update:** Internal testing is underway by the clerk's office with the expectation that this new feature initially will be made available to interested entities in June 2001.]



**d. Case Data Upload Program (*Barry Wells*)**

An assessment is being made of a BV1 compliant case opening data upload program, which has been developed by the California Southern Bankruptcy Court. Using vendor compliant software programs, this program should save attorneys filing bankruptcy petitions and schedules a significant amount of time. The program makes possible the uploading of data automatically into the BV1 for electronic filing. **[Update:** The clerk's office currently is working with interested software vendors whose products currently are compliant with the case data upload program. The Court neither passes on the merit of the product of these vendors nor endorses or sponsors any such vendor. The Court makes no representations and disclaims all express, implied, and statutory warranties of any kind to any party including warranties as to accuracy, timeliness, completeness, merchantability, or fitness of the products and/or services that are BV1 compliant.]

**6. Other Issues of Interest**

No additional issues of interest were raised at the meeting.

**7. Next Meeting Date, Location(s) and Time**

It was agreed that the next UAG meeting would be scheduled for Wednesday, May 23, 2001. The meeting will be held via video teleconference, through Sprint, from 12:30 p.m. to 2:00 p.m., at the Court's Alexandria, Norfolk and Richmond facilities. UAG members are requested to provide Bill Redden with proposed agenda items, issues of interest and technical questions on a date to be determined later [May 14, 2001]. This will facilitate a review by court representatives of any submitted agenda items and technical questions prior to the next UAG meeting.

An agenda for the next meeting will be sent out by the clerk's office on a date to be determined later [by May 18, 2001].

The meeting adjourned at 1:40 p.m.

Respectfully submitted,

William C. Redden

Attachment